

# SCHIFF HARDIN & WAITE

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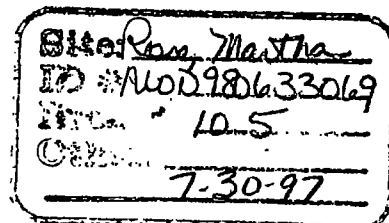
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REC'D AUG 06 1997

July 30, 1997

J. Scott Pemberton  
United States Environmental Protection Agency  
Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101



Re: Martha C. Rose Chemical Site

Dear Scott:

Following our last conversation, I have now had an opportunity to review the draft Consent Decree and also to obtain the comments of the Rose Chemical Steering Committee ("RCSC") Legal Subcommittee. We have a number of thoughts on it which I will convey below, generally by reference to a specific page and paragraph number. At the outset, however, I wonder what has happened to the two Notices of Termination that you previously sent us in draft and on which we commented. As I have explained in the past, we feel strongly about settling the remaining oversight costs concurrently with closing out the two AOCs and the unilateral order and those two Notices of Termination will, at least, deal with the two AOCs. We recognize the ongoing problem presented by the state of Missouri in closing out the unilateral order; I am curious exactly where that stands as I have not heard anything in some weeks. I remain of the view that EPA may have to take the "bull by the horns" to finish that off.

In any event, turning to the draft Consent Decree I have one major concern and that is the parties covered by the Decree. As it is drafted it only applies to the RCSC and not all of those parties who have participated in the resolution of the Rose site by executing a consent agreement or a buy-out agreement and I believe they are entitled to closure on the oversight costs as well. While I would not expect EPA or DOJ to turn around and sue some of those non-RCSC participants, I feel an obligation to give them the same protection that the RCSC obtains. Furthermore, were EPA or DOJ to pursue any of those parties for additional oversight costs, the RCSC's contractual commitment is to indemnify those parties in such an event, undermining the whole point of settling the oversight claims. I am not sure how you want to deal with those other parties in this Consent Decree but I do believe we have to do that.

I am assuming that you will file a complaint simultaneously with filing the Consent Decree and I believe I would like to see the complaint in advance of its filing. Although we will not



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be subscribing to any of the allegations in that complaint, I still think I will be more comfortable looking at it in advance.

On page 6, paragraph "O," the word "it" should be "its."

On page 7 paragraph 9 we would request that the time for payment be changed from 30 days after the entry of this Consent Decree to 30 days after notice of the entry of the Consent Decree. I am just a little concerned about lags by the Court or the Agency in getting notice to us that the order has actually been entered so that we can then have Clean Sites take the necessary actions to electronically transfer the funds as required in this paragraph.

Paragraph "F" on page 11 raises a general concern on my part. We have agreed to settle the past oversight costs of the Agency as you have stated, for between \$110,000 and \$120,000. My interest, therefore, is to postpone entry of this Consent Decree until all matters at this site are resolved -- including the one remaining matter, the monitoring program and the state of Missouri's objections to terminating it, so that any oversight costs the Agency incurs in connection with overseeing the monitoring program (should we be so unfortunate as to have to go forward with it) or overseeing the closure of that aspect of the unilateral order, will be closed out by this Decree. While I do not think it requires a change in this language, it does raise another sound reason to postpone execution and entry of this Consent Decree as long as possible so that we can have complete closure of the Rose Chemical matter. As you know, our group wants finality with this site; to turn it back to the City of Holden and "close the book" on this site.

On page 12, paragraph "B" puzzles me a bit in that we did have instrumentalities of the federal government who were PRP's at this site, all of whom we have settled with either by the consent party agreement or the buy-out agreement and, therefore, I believe they are adequately protected from any claims we can make against them. If you have something else in mind with this paragraph I would appreciate knowing what it is, otherwise I believe it may be unnecessary although, on the other hand, it may just be redundant.

On page 14, paragraph 26 deals with record retention and I am wondering if we should not address here, as this should be the final formal document in the Rose Chemical saga, what we are actually doing and what I believe we have agreed to do. My concern is the same one we discussed some time ago and have dealt with informally and that is the need for each of the parties to retain documents they may have that are duplicates of what is going to be kept by Clean Sites. Possibly language in this paragraph that allows the settling defendants (and the other parties that are to be covered by the order) to dispose of any document that is being retained in the master depository. Again I am not sure how you may want to address this issue but I think it would be appropriate for this order to memorialize the actual plan.

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As to paragraph 30, on pages 16-17, I believe the appropriate individual for notice to be sent on behalf of the settling parties would be Jene Robinson at Illinois Power but I would request that it also provide for a copy to be sent to me. I just think dual notice has a better chance of being effectively delivered and responded to than a single notice.

Finally, we will seek to obtain the information that you requested in your transmittal letter --- specifically the names of the current entities that are members of the RCSC as well as the name of the person and his or her title and address who will be signing the Consent Decree for each such entity. I thought it might be more efficient, knowing how long it can take to circulate and get signature pages back, to have the order signed by, for example, Jene and me on behalf of all the parties but on reflection, since it is a court entered decree, I would have to file an appearance on behalf of each of the entities and to do that I would need to get authorization from each which will be no easier than simply having each of the entities sign.

After you have a chance to review these comments, if you wish to discuss them please feel free to call me. Again as I indicated at the outset, we still prefer to wrap everything up at once and so are awaiting the Notices of Termination on the two AOCs and a Notice of Termination on the unilateral order which may first require a resolution of the dispute with Missouri. We would like to do this all at once so that we can pay the oversight costs and close out the rest of the matters involving the Rose Chemical project (document retention excepted).

Very truly yours,



Sheldon A. Zabel

SAZ/mjt

cc: Rachel Jacobson  
Jene Robinson  
Jay Pruett  
Joe Kwasnik  
Gary Johnson  
Ellen Fitzpatrick  
Robin Robinson